IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No.548 of 2005
with
Cross Objection
with
Civil Appln no. 645 of 2005

Satish Madanrao Kadam ..appellant

vs

Sanjay Madanrao Kadam and ors.. respondents

Mr Amit Borkar for appellant

Mr.R R.Bhosale for respondent no. 3

CORAM; A.M.KHANWILKAR J.

DATED l3.6.2006

P.C.

l. Heard learned counsel for the parties. Perused the relevant material on record. In my opinion the view taken by the court below on facts of the case is a possible view. The court below has analysed all the relevant aspects of the matter in paras l8 to 23, to ultimately come to the conclusion that there is absolutely no evidence on record to support the stand of the appellant that the properties in question were not self acquired properties of the defendant. On this finding the conclusion reached by the court below in refusing

to grant interim relief in respect of the properties referred to in clause 3 of the operative order is the correct approach adopted by the court below. However, counsel for the appellant would contend that the factum of execution of the Will cannot be established and there is no evidence to substantiate that factum. According to the appellant, the conditions specified in section 63(c) of the Act are lacking. It is not possible to entertain this submission. The condition which is lacking is not articulated in the pleadings as filed. In any case, the court below has rightly discarded the contention raised on behalf of the appellant with regard to the factum of execution of the Will as can be discerned from paras 24 to 28 of the impugned order. Suffice it to observe that the view taken by the court below in that behalf is a possible view. Hence no interference is warranted in this appeal from order.Appeal is accordingly dismissed. Needless to observe that the trial court will be well advised to consider the suit on its own merits on the basis of the material on record, uninfluenced by the observation made in the impugned order and in this order. It is clarified that in the event the respondents fail to establish their case, it will be open to the trial court to pass appropriate order in that behalf.

2. In so far as the Cross Objection is concerned, the learned counsel for the original defendant no. 3 relying on the observation made by the lower court that the plaintiff has not made out prima facie case, would contend that on that finding the question of granting injunction in terms of prayer clause (II) of the operative order against defendant no. 3 does not arise and to that extent the impugned order cannot be sustained. This submission, however,overlooks the observations made in the preceding paragraph (numbered as 6 at page 89 of the paperbook) with regard to the factum as to whether the property is actually owned by the mother Suryaprabha or Madanrao the father of the parties. Moreover, other contentious issues concerning the said property will have to be resolved at the trial. The trial court has rightly held that the said property stands in the name of the mother Suryaprabha and hence same will have to be preserved till the disposal of the trial. Viewed thus there is no reason to interfere with the discretionary order of injunction granted by the trial court in so far as C.S.No.250B plot no.44 situate at E Ward Nagla Park, Kolhapur is concerned. That order needs no interference.

Accordingly, even Cross objection will have to be dismissed.

3. The appeal as well as Cross objections and the accompanying application are disposed off on the above terms.

4. Having regard to the nature of controversy involved, the trial court is directed to expeditiously dispose of the suit on its own merits preferably by the end of March 2007. All questions on merits are left open.

5. At this stage the learned counsel for the appellant seeks continuation of the ad-interim order to enable the appellant to take the matter in appeal, if so advised. As the request is reasonable, ad-interim order is continued for a period of four weeks from today.